

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
Schools and Libraries	)	CC Docket No. 02-6
Universal Service Support Mechanism	)	
	)	
Mansfield Independent School District	)	
FCC Form 471 Application No. 904090	)	

**PETITION FOR RECONSIDERATION**

Pursuant to section 1.106 of the Commission’s rules,<sup>1</sup> the Mansfield Independent School District (“Mansfield” or “Applicant”) respectfully requests reconsideration of a decision of the Wireline Competition Bureau (“Bureau”) to deny Mansfield’s appeal of a Universal Service Administrative Company (“USAC”) decision regarding the above-captioned application for Schools and Libraries Universal Service funding.<sup>2</sup> The Bureau’s grounds for denial of Mansfield’s appeal—that Mansfield’s FCC Form 470 lacked adequate specificity and contained no indication of a request for proposal (“RFP”) for the services Mansfield sought—are not supported by the facts or by Commission precedent. Mansfield therefore respectfully asks the Bureau to reverse its previous decision—or, in the alternative, to waive the Commission’s rules to the extent necessary to grant the requested relief—and instruct USAC to release the funds requested in the above-captioned application for Funding Year 2013.

Mansfield notes that the above-captioned application was one of eight applications included in its original appeal, which was filed on October 29, 2014. The Bureau has already

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<sup>1</sup> 47 C.F.R. § 1.106.

<sup>2</sup> Funding Request No. 2465173.

denied the other seven applications included in that appeal, and Mansfield has already filed a petition for reconsideration of that denial. Because they arise from the same appeal, the facts and arguments that Mansfield has already submitted in its earlier petition for reconsideration apply equally to the instant Petition. Accordingly, as a matter of administrative efficiency, Mansfield further requests that the Bureau incorporate by reference the pleadings that Mansfield has already filed relating to the underlying appeal.

## **I. BACKGROUND**

On October 29, 2014, Mansfield filed an appeal of USAC demand payment letters and denials of funding relating to eight applications for E-rate funding for funding years 2011, 2012, and 2013, including the above-captioned application.<sup>3</sup> In a June 30, 2015 Public Notice, the Bureau denied Mansfield's appeal with respect to seven of the eight applications included in the appeal.<sup>4</sup> The Bureau's stated reason for denying Mansfield's appeal was "FCC Form 470 with Inadequate Specificity and No Indication of Request for Proposal (RFP) on Services Being Sought."<sup>5</sup> Mansfield filed a petition for reconsideration of the Bureau's denial on July 30, 2015.<sup>6</sup>

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<sup>3</sup> Mansfield Independent School District, Application Nos. 788976, 794118, 815691, 845493, 871961, 902395, 906722, 904090, Request for Review or Waiver, CC Docket No. 02-6 (filed Oct. 29, 2014) ("Appeal"). The above-captioned application requested \$19,337.25 for funding year 2013. *See id.* at 2.

<sup>4</sup> Public Notice, *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket Nos. 02-6, 96-45, DA 15-773, at 5 (June 30, 2015) ("June 2015 PN").

<sup>5</sup> *Id.*

<sup>6</sup> Petition for Reconsideration, *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Mansfield Independent School District FCC Form 471 Application Numbers 788976, 794118, 815691, 845493, 871961, 902395, 906722 (filed July 30, 2015) ("July 2015 Petition for Reconsideration").

On July 29, 2016, the Bureau denied Mansfield’s appeal with respect to the above-captioned application as well.<sup>7</sup> It is unclear why the Bureau’s July 2015 denial addressed all of the applications in Mansfield’s appeal except for the above-captioned application. Because the Bureau’s stated reason for denial in its July 29, 2016 Public Notice was identical to the stated reason for denial in its June 30, 2015 Public Notice,<sup>8</sup> Mansfield suspects it was an inadvertent omission by the Bureau. In any event, Mansfield’s arguments in the instant Petition and those in its July 2015 Petition for Reconsideration apply to the same set of facts and respond to the same Bureau decision.

While Mansfield incorporates all prior filings in the Appeal, for the Bureau’s convenience in the instant Petition, Mansfield attaches as exhibits the documents filed in the July 2015 Petition for Reconsideration, which detail Mansfield’s key arguments in the instant Petition:

<b>Document</b>	<b>Date Filed</b>
Petition for Reconsideration	July 30, 2015
Attachment A: Summary of Technology Consulting Firm Recommendations	July 30, 2015
Attachment B: Examples of “District Wide” Use in FCC Forms 470	July 30, 2015
Attachment C: Letter of Agency	July 30, 2015
Attachment D: Source Data for “District Wide” Use in Texas	July 30, 2015
Supplement to Petition	March 11, 2016

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<sup>7</sup> Public Notice, *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket Nos. 02-6, 96-45, DA 16-860, at 7 (July 29, 2016) (“*July 2016 PN*”).

<sup>8</sup> See July 2016 PN at 7 & n.19; June 2015 PN at 5 & n.11.

## **II. REQUEST FOR RELIEF**

### **A. The Bureau Should Permit Mansfield to Incorporate by Reference Pleadings That It Has Already Filed Regarding Its Appeal of USAC's Denial of This Application**

As we have explained, Mansfield's original appeal to the Commission encompassed eight applications for E-rate funding, including the above-captioned application. Mansfield has already filed a petition for reconsideration addressing the seven applications that the Bureau denied in June 2015; the instant Petition addresses the eighth application included in its Appeal, which the Bureau denied in July 2016.

The Bureau's rationale for denying the above-captioned application was identical to its rationale for denying the other seven applications in its earlier Public Notice. The Bureau described no new facts, made no new arguments, and cited no additional precedent. Accordingly, Mansfield's arguments in response to the Bureau's earlier denial apply equally to the denial underlying the instant Petition. Mansfield therefore requests that the Bureau permit it to incorporate by reference the pleadings it submitted in response to the Bureau's partial denial of Mansfield's appeal in June 2015.<sup>9</sup> Incorporating Mansfield's prior pleadings into this proceeding is appropriate as a matter of administrative efficiency.<sup>10</sup>

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<sup>9</sup> In addition to the petition for reconsideration that Mansfield filed on July 30, 2015, Mansfield later filed a letter summarizing additional information that it provided to the Bureau in a December 3, 2015 meeting. Letter from Christie Hobbs, Counsel to Mansfield Independent School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 11, 2016). Mansfield asks that both the petition for reconsideration and the letter be incorporated by reference into the instant proceeding.

<sup>10</sup> For the same reasons, the instant Petition and Mansfield's July 2015 Petition for Reconsideration could be addressed in a single order, if the Bureau finds it appropriate to do so.

**B. The Bureau Failed to Establish that Mansfield's Application Violated the Commission's Rules**

Although we seek permission to incorporate Mansfield's previous pleadings by reference, we also explain in this section why the Bureau should reverse its decision. In brief, the Bureau's decision failed (as did USAC's) to demonstrate that Mansfield's application violated the Commission's rules. In fact, the Bureau did not provide an explanation for its decision sufficient for Mansfield to understand why its appeal was denied. The Bureau also cited inapposite precedent in support of its denial and apparently failed to consider precedent that supported Mansfield's position.

The Commission's rules state that the "FCC Form 470 and any request for proposal cited in the FCC Form 470 shall include, at a minimum, the following information, to the extent applicable with respect to the services requested: (i) a list of specified services for which the school, library, or consortia including such entities, anticipates they are likely to seek discounts; and (ii) sufficient information to enable bidders to reasonably determine the needs of the applicant."<sup>11</sup> USAC denied the above-captioned application on the ground that Mansfield's FCC Form 470 "did not define the specific services or functions . . . for which funding would be sought."<sup>12</sup> The Bureau similarly denied Mansfield's appeal because the above-captioned application lacked adequate specificity and contained "No Indication of [a] Request for Proposal (RFP)" for the services sought.

As Mansfield explained in its July 2015 Petition for Reconsideration, however, its Forms 470 were not overbroad.<sup>13</sup> Mansfield properly included a list of all of the priority one

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<sup>11</sup> 47 C.F.R. § 54.503 (2011).

<sup>12</sup> Appeal at 2.

<sup>13</sup> July 2015 Petition for Reconsideration at 5-6.

services for which it was seeking bids. The services Mansfield sought were listed in its technology plan.<sup>14</sup> Mansfield therefore provided a list of specified services for which it was likely to seek discounts, in accordance with the Commission's rule. Mansfield's Form 470 provided sufficient information for a bidder to reasonably determine its needs.

USAC did not make clear exactly what deficiency or deficiencies it had identified. Based on questions Mansfield received in the application review process, it seemed that USAC took issue with Mansfield's use of the term "district-wide."<sup>15</sup> However, by stating that it wanted services district-wide, Mansfield provided enough information for a bidder to determine Mansfield's priority one needs. If a service provider wanted to bid and was confused by the use of "district-wide" as a term, it could have asked Mansfield for clarification or more information, or simply looked up the locations of the district's buildings on its website. There is no Commission precedent suggesting that the use of "district-wide" on a Form 470 is inappropriate, so Mansfield had no reason to think that USAC would take issue with the term.

Other than USAC's apparent and unfounded objection to the use of the term "district-wide," neither USAC nor the Bureau identified any specific information that Mansfield's Form 470 was lacking. In fact, Mansfield's Form 470 did indeed include a list of specified services for which it was seeking funding. Neither the precedent the Bureau cited in its denial nor any other precedent the Applicant is aware of suggests that Mansfield's Form 470 was inadequate in this respect.

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<sup>14</sup> *Id.* at 7-9 (listing the services requested and the corresponding reference in Mansfield's technology plan.).

<sup>15</sup> July 2015 Petition for Reconsideration at 2-3. As the Forms 470 must be filed with USAC and then posted on USAC's website, if USAC had an issue with the sufficiency of the information included, USAC should have identified the issue to Mansfield soon after Mansfield filed its Form 470 for funding year 2011, not three years later.

The Bureau was correct that Mansfield’s Form 470 for the above-captioned application contained no indication that it would issue an RFP, but the absence of this language did not constitute a violation of Commission rules. If an applicant describes the services it is seeking on its Form 470, as Mansfield did, it is not required to issue an RFP as well.<sup>16</sup> The most helpful precedent on this issue is the Bureau’s 2011 *Ramirez* order.<sup>17</sup> In *Ramirez*, the applicant failed to indicate that it intended to issue an RFP.<sup>18</sup> The Bureau found that the applicant’s Form 470 “contained enough detail for the services providers to identify the desired services and to formulate bids” such that all bidders were on a level playing field.<sup>19</sup> *Ramirez* is more on point than the orders cited by the Bureau in the *July 2016 Public Notice* because *Ramirez* also used the term “district-wide” to refer to the scope of services requested.<sup>20</sup>

The Bureau’s *Chicago* order, which the Bureau cites as support for its denial, is inapposite to Mansfield’s appeal because Chicago did not seek bids for internal connections at all; that is, internal connections services were completely omitted from its 470.<sup>21</sup> Mansfield, in contrast,

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<sup>16</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, at 9077-80, ¶¶ 572-579 (1997); *see also Request for Review of the Decision of the Universal Service Administrator by Washington Unified School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13746, 13748, DA 13-1946, ¶ 2 (Wireline Comp. Bur. 2013) (“The applicant may describe the services it is seeking on its FCC Form 470 or indicate on the form that it has an RFP available providing detail about the requested services.”).

<sup>17</sup> *See Request for Review of a Decision of the Universal Service Administrator by Ramirez Common School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 11-1039 (Wireline Comp. Bur. 2011).

<sup>18</sup> *See id.* at ¶ 7.

<sup>19</sup> *Id.*

<sup>20</sup> *See* FCC Form 470, *Ramirez Common School District* (posted Dec. 12, 2007), *available at* [http://www.slforms.universalservice.org/Form470Expert/PrintPreviewFY8.aspx?appl\\_id=649343&fy=2008&src=search](http://www.slforms.universalservice.org/Form470Expert/PrintPreviewFY8.aspx?appl_id=649343&fy=2008&src=search).

<sup>21</sup> *See Petition for Reconsideration by Chicago Public Schools; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, 29 FCC Rcd 9289, 9291-92, ¶¶ 7-8 DA 10-1084 (Wireline Comp. Bur. 2014).

requested bids for all the services for which it sought E-rate funding. The Bureau's *Washington USD* order, also cited as support for its denial of Mansfield's appeal, is similarly inapposite; there, bidders were disadvantaged because the school district issued an RFP with much greater detail than its Form 470, failed to note that it would have an RFP on its Form 470, and did not provide the RFP to all of the bidders.<sup>22</sup> But Mansfield did not issue an RFP, and therefore no potential bidder was disadvantaged for not having an RFP, as was the case in *Washington USD*. Finally, while the Commission's 2003 *Ysleta* order established the requirement of "sufficient" information for FCC Forms 470 that was later codified in the Commission's rules, the facts in *Ysleta* are not applicable here.<sup>23</sup> In *Ysleta*, the Commission found that the school district sought bids for a "systems integrator," not E-rate eligible services. Here, there is no dispute that Mansfield sought bids for E-rate eligible services.

In short, the Bureau's denial relies on precedent that differs substantially from the facts in Mansfield's appeal and omits discussion of precedent that supports Mansfield's position.

**C. In the Alternative, Mansfield Requests a Waiver of Section 54.503 of the Commission's Rules**

As we have explained, Mansfield's FCC Form 470 for the above-captioned application did not violate the Commission's rules. Even if the Bureau concludes that Mansfield did violate the "list of specified services" requirement in Section 54.503, however, a waiver of the rule would serve the public interest in this instance. In determining whether a waiver should be granted, prior

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<sup>22</sup> See *Request for Review of the Decision of the Universal Service Administrator by Washington Unified School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13746, 13748, DA 13-1946, ¶¶ 3-5 (Wireline Comp. Bur. 2013).

<sup>23</sup> See *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District et al.; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 26406, 26410, ¶¶ 7, 22-30 (2003).



Bureau orders establish an analysis of whether the outcome of the competitive bidding process was consistent with the policy goals underlying the rules.<sup>24</sup> In *Approach Learning*, for example, the applicants had failed to indicate they planned to issue an RFP. The Bureau granted a waiver because (1) all bidders were on a “level playing field” and (2) there was no actual harm to the competitive bidding process.<sup>25</sup>

Mansfield did not receive any bids for its requested services. Because no bids were received, Mansfield selected the best service from the state-negotiated contract. No service provider had any information that another provider did not have. No provider was disadvantaged. As such, even if Mansfield had written its FCC Form 470 in greater detail, it is likely that no bidders would have bid to provide the requested services, and thus the outcome of the competitive bidding process would have been the same. Therefore, there was no harm to the competitive bidding process or the Universal Service Fund (“USF”).

While there was no harm to the USF caused by any inadvertent error on Mansfield’s part, the harm to Mansfield if the Bureau denies the instant Petition would be substantial. The total amount at issue – \$1.8 million for telecommunications and Internet access that Mansfield would have to bear without USF help – equals the annual salaries of 58 teachers. USAC’s delay in identifying the issue increased the harm to Mansfield. USAC did not tell Mansfield its 2011 Form

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<sup>24</sup> See *Request for Review of the Decision of the Universal Service Administrator by Euclid City School District; Schools and Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 12-1843, ¶ 2 (Wireline Comp. Bur. 2012) (“Given that Euclid and Shannon ultimately selected the least expensive responsive service offerings, despite failing to assign the highest weight to price in their vendor evaluation processes, we find that the outcomes of their vendor selection processes were consistent with the policy goals underlying the Commission’s competitive bidding rules”).

<sup>25</sup> See *Request for Review of the Decision of the Universal Service Administrator by Approach Learning and Assessment Centers; Schools and Libraries Universal Service Support Mechanism*, Order, CC Docket 02-6, DA 08-2380, at ¶ 8 (Wireline Comp. Bur. 2008).

470 was incorrect until more than three years after it was filed. Had USAC acted more quickly, Mansfield could have revised at least two years' worth of forms, including the one associated with the above-captioned application.

Numerous applicants recently have used the same level of specificity in their bidding that Mansfield used here, specifically using the term "district-wide," without issuing an RFP.<sup>26</sup> If the Bureau denies the instant Petition, then it will appear to be applying the rule arbitrarily. If, on the other hand, the Bureau denies funding for all of the school districts that use this terminology, then many other schools would suffer the same harm as Mansfield, without any benefit to the program. In addition, since Mansfield filed the above-captioned application, the Commission has revised FCC Form 470 in a manner that has, for the most part, remedied this issue. As a result, a denial of the instant Petition would not deter other schools from making the same mistakes in the future. It would be more appropriate for the Bureau or the Commission to explain the correct amount of information that should be included in a FCC Form 470 or an RFP through additional training or by providing an example of a sufficient RFP instead of singling out Mansfield with a strict interpretation of the rule.

For all of these reasons, Mansfield respectfully requests that the Bureau waive section 54.503 of its rules if it determines that Mansfield has violated that rule.

### **III. CONCLUSION**

For the foregoing reasons, Mansfield Independent School District requests that the Bureau:

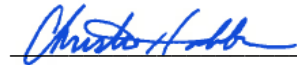
1. grant its Petition for Reconsideration;
2. reverse the Bureau's previous denial of its appeal with respect to the above-captioned application;

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<sup>26</sup> See July 2015 Petition for Reconsideration at 13-19.

3. grant its appeal of USAC's decision, or, in the alternative, waive the Commission rules to the extent necessary to grant the requested relief;
4. instruct USAC to release the funds requested in the above-captioned application for funding year 2013; and
5. issue any other relief to which Mansfield may be entitled, such as other waivers necessary to allow Mansfield to receive funding.

Respectfully submitted,



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